

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEHINDE BALOGUN,

Plaintiff,

Case No. 18-CV-301

v.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM,
KEVIN CHEREK and BOBBY BURROW,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
PROPOSED VERDICT (DKT. 70)**

Defendants, by and through their undersigned counsel, submit this response to the Plaintiff's proposed jury instructions as follows:

Defendants object to all of Plaintiff's proposed verdicts on the basis of liability (questions 1-9) on the grounds that plaintiff's proposed questions are confusing and Defendants' believe their proposed special verdict should be used. (Dkt. 65.) Additionally, these questions of liability are presented to the jury on the improper protected category of discrimination of "color" which Plaintiff did not plead in his complaint. (*See* Dkt. 15.)

Defendants object to Plaintiff's proposed verdict question number 10. In Plaintiff's proposed "Damages Instructions" the jury is told that "[t]he court will calculate and determine any damages for past or future lost wages and benefits."

Defendants agree that the Court should decide past lost wages in the event it is necessary.

Defendants' objection to Plaintiff's proposed verdict question number 11 because Plaintiff does not have an expert to opine about future damages related to emotion distress and humiliation.

Defendants object to Plaintiff's proposed verdict number 12. Plaintiff did not seek punitive damages in his complaint. (See Dkt. 15.) Additionally, even if Plaintiff had pled punitive damages in his complaint, punitive damages are not permitted against the State under Title VII. *Passanati v. Cook County*, 689 F.3d 655, 677 (7th Cir. 2012) (holding that a plaintiff's government employer "cannot be held liable for punitive damages.").

Dated this 22nd day of July, 2019.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

s/ Rachel L. Bachhuber
RACHEL L. BACHHUBER
Assistant Attorney General
State Bar #1052533

JEFFERY A. SIMCOX
Assistant Attorney General
State Bar #1116949

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

(608) 266-0188 (Bachhuber)
(608) 267-2230 (Simcox)
(608) 267-8906 (Fax)
bachhuberrl@doj.state.wi.us
simcoxja@doj.state.wi.us